IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 2756 of 2002

Between:

S.Nanjunda Reddy, S/o Adinarayana Reddy,

Aged 58 years, Agriculturiest, r/o Nalluru

Village, Roddam Mandal, Anatapur District.

..... PETITIONER

AND

1. Deputy Registrar-cum-Officer on

Special duty, Co-Operative Central

Bank, Anatapur.

2. Nalluru Primary Agricultural Co-Operative

Society, Nalluru, Roddam Mandal,

Anantapur District, reptd. by its President.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court

may be pleased to issue an appropriate writ, order or direction, more particularly, one in the nature of writ of mandamus, declaring the action of the respondents in issuing sale notice under Rule-52 of A.P.C.S. Rules for auction of the land on 19.02.2002 of the petitioner measuring Ac.2-18 cents in S.No.371 as illegal, arbitrary, unconstitutional and violative of principles of natural justice and consequently, set-aside the same and pass such other order or orders.

Counsel for the Petitioner: MR.R.N.HEMENDRANATH REDDY
Counsel for the Respondent No.1: The Government Pleader for Co-Operation

Counsel for the Respondent No.2: MR.O.MANOHAR REDDY

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION NO.2756 OF 2002

ORDER:

The petitioner herein who had obtained a loan from the 2nd respondent-society seeks to assail the impugned proceedings to hold the auction in respect of the land in Sy.No.371 admeasuring Ac.2-18 cents situated in Nalluru Village, Roddam Mandal, Anantapur District, as illegal and unsustainable.

The case of the petitioner, in brief, is that though he had obtained a loan of Rs.6,000/- in the year 1980 from the 2nd respondent-society but subsequently, he had discharged the same in the year 1985 itself and also obtained a 'No due' Certificate on 08.08.1994. However, in spite of the said discharge, the 2nd respondent-society has taken the recourse to recover the said amount by selling the aforesaid property by holding the auction, which is totally illegal.

In reply to the allegations made by the petitioner in the affidavit, filed in support of the writ petition, the respondent-society has filed a

counter-affidavit and stated that the allegations made by the petitioner that he has discharged all the loans availed by him from the respondent-society is not correct. In fact, according to the respondent-society, the petitioner availed two loans one for Rs.5,000/- and another for Rs.6,000/-, of which the loan of Rs.6,000/- was paid and discharged. But the other loan amount of Rs.5,000/- still remained unpaid and therefore, proceedings have been initiated and accordingly, an award was passed on 19.01.2000 and in pursuance of which only, the present auction proceedings are initiated for the purpose of realization. Therefore, the petitioner is not entitled for the relief sought for in this writ petition.

Having considered the submissions made by the learned counsel for both the parties and on perusal of the material papers on record, the only question that falls for consideration is as to whether the impugned action of the respondent-society herein in trying to recover the amount from the petitioner by way of auction in respect of the above said property is valid or not.

The petitioner approached this Court stating that he had obtained a loan of Rs.6,000/- only and subsequently, he had discharged the same and in spite of the said fact, the respondent-society are holding the auction of the aforesaid property. Whereas, according to the respondent-society, the petitioner availed two loans, one for Rs.5,000/- and another for Rs.6,000/-, and the loan transaction of Rs.6,000/- was discharged but the other loan transaction of Rs.5,000/- remained un-discharged and therefore, the award was passed. There is absolutely no explanation forthcoming on behalf of the petitioner for keeping silent in respect of the other loan transaction for Rs.5,000/-. There is no whisper from him as to whether he obtained the said loan of Rs.5,000/- or there is any discharge thereof. Apparently, the petitioner had intentionally kept silent and suppressed the said fact from this Court. Admittedly, the other loan transaction of Rs.6,000/- was already paid in respect of which no proceedings are initiated.

In the circumstances, I do not find any intelligence to invoke the jurisdiction conferred under Article-226 of the Constitution of India. Even otherwise as against the award passed on 19.01.2000, the petitioner has got an alternative remedy of appeal under Section-76 of the A.P. Co-Operative Societies Act.

In view of the same, the writ petition is not maintainable. Accordingly, the writ petition is disposed of with liberty to the petitioner to avail the remedy of appeal. The petitioner shall file an appeal within a period of 30 days from the date of receipt of a copy of this order before the appellate authority and on filing such appeal, the same shall be disposed of on merits and in accordance with law. No costs.

B.PRAKASH RAO, J

14.09.2004

DR

To

1. The Deputy Registrar-cum-Officer on

Special duty, Co-Operative Central

Bank, Anatapur.

2. The President, Nalluru Primary Agricultural

Co-Operative Society, Nalluru, Roddam Mandal,

Anantapur District.

3. Two CCs to Government Pleader for Co-Operation,

High Court Buildings, Hyderabad. (OUT)

4. Two CD copies.